

STANDARD APPLICATION  
**Harford County  
Board of Appeals**  
Bel Air, Maryland 21014

RECEIVED

Case No. 5477  
Date Filed 01/31/05  
Hearing Date \_\_\_\_\_  
Receipt \_\_\_\_\_  
Fee 150

HARFORD COUNTY COUNCIL

Shaded Areas for Office Use Only

Type of Application

- ☐ Administrative Decision/Interpretation  
☐ Special Exception  
☐ Use Variance  
☐ Change/Extension of Non-Conforming Use  
☐ Minor Area Variance  
☐ Area Variance  
☒ Variance from Requirements of the Code  
☐ Zoning Map/Drafting Correction

Nature of Request and Section(s) of Code \_\_\_\_\_

CASE 5477 MAP 40 TYPE Variance

ELECTION DISTRICT 03 LOCATION 312 Ponfield Rd. West, Forest Hill

BY Andrew King & Kathleen Meehan

Appealed because a variance pursuant to Sec. 267-26C (6) of the Harford County Code to permit a retaining wall to be located within a recorded easement requires approval by the Board.

**NOTE:** A pre-conference is required for property within the NRD/Critical Area or requests for an Integrated Community Shopping Center, a Planned Residential Development, mobile home park and Special Exceptions.

Owner (please print or type)

Name Andrew King Phone Number 443-271-1675  
Address 312 Ponfield Rd W Forest Hill MD 21050  
Street Number Street City State Zip Code

Co-Applicant Kathleen Meehan Phone Number 443-271-0435  
Address same  
Street Number Street City State Zip Code

Contract Purchaser \_\_\_\_\_ Phone Number \_\_\_\_\_  
Address \_\_\_\_\_  
Street Number Street City State Zip Code

Attorney/Representative \_\_\_\_\_ Phone Number \_\_\_\_\_  
Address \_\_\_\_\_  
Street Number Street City State Zip Code

## Land Description

Address and Location of Property 312 Ponfield Rd W Forest Hill, MD 21050

Subdivision Tuckahoe Farms Lot Number 21

Acreage/Lot Size .176 Election District 03 Zoning R3 Urban Residential

Tax Map No. 40 Grid No. IF Parcel 422 Water/Sewer: Private \_\_\_\_\_ Public X

List ALL structures on property and current use: Pool, Patio, Fence, Hot tub, Retaining wall

Estimated time required to present case: ASAP

If this Appeal is in reference to a Building Permit, state number \_\_\_\_\_

Would approval of this petition violate the covenants and restrictions for your property? No

Is this property located within the County's Chesapeake Bay Critical Area? Yes \_\_\_\_\_ No ✓

If so, what is the Critical Area Land Use designations: \_\_\_\_\_

Is this request the result of a zoning enforcement investigation? Yes \_\_\_\_\_ No \_\_\_\_\_

Is this request within one (1) mile of any incorporated town limits? Yes \_\_\_\_\_ No ✓

## Request

Variance for Retaining wall in Easement - Had to install to make yard presentable + functional with regards to drainage + pool.

## Justification

- 1) Pool company incorrectly installed pool + refused to remedy during actual construction. Violated contract as far as agreed depth into ground. Presently pursuing but in early stages.
- 2) Home owners association approved 3 out of 4 neighbors to have fences less than 4 ft in height.

*If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)*

Harford County Board of Appeals  
Justification for Variance for Retaining Wall in Easement  
312 Ponfield Rd. West  
Forest Hill, MD 21050

This is an extension of brief explanations written on application.

May 2004: Applied for and received county permits for in the ground pool, patio, and fence prior to purchase of home. Contracted for pool to be built in June. On contract states that pool to be sunk 3'-3.5' into ground.

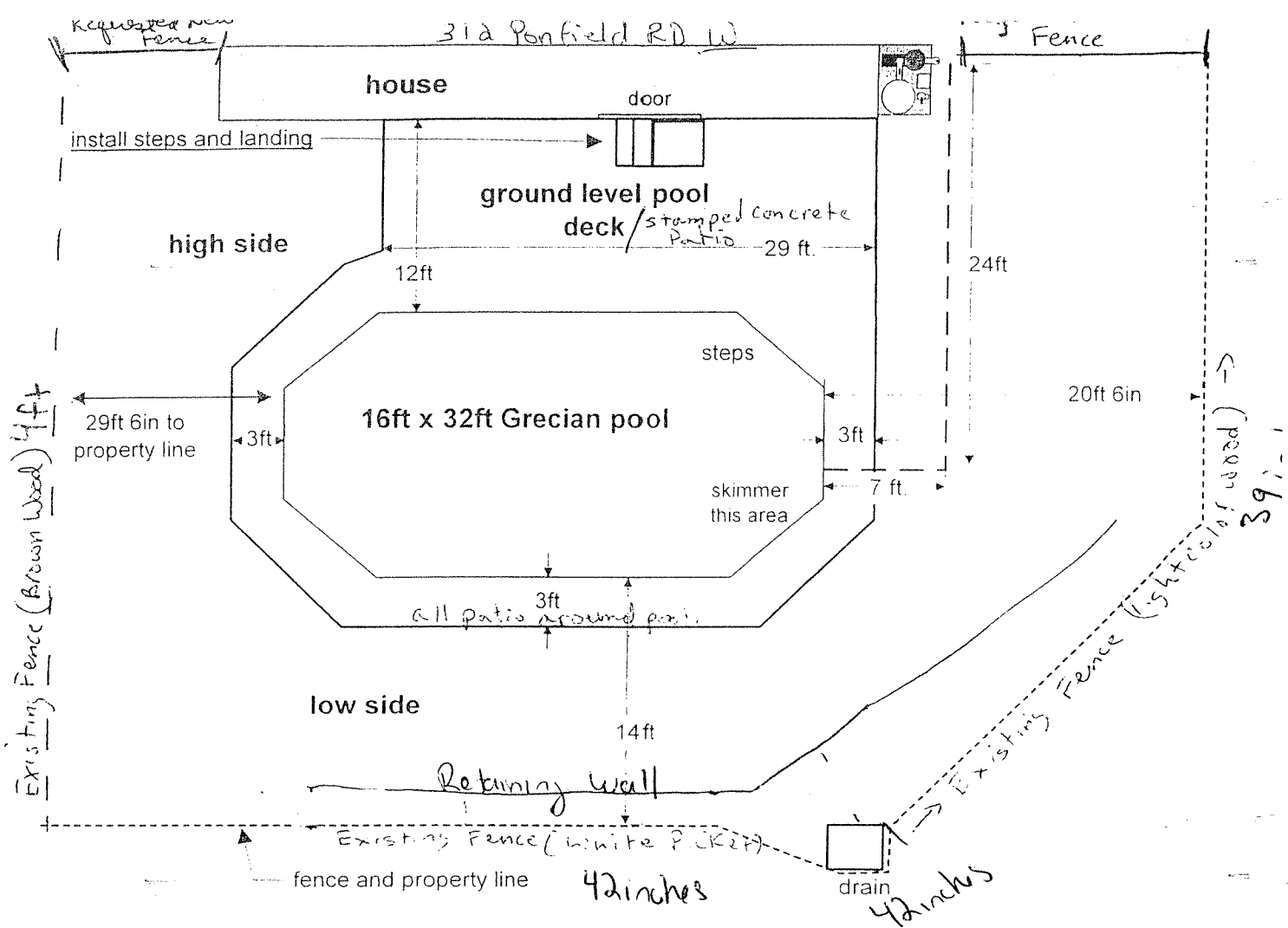
June 2004- Spoke to HOA because 3 out of 4 neighbors have fences that are less than 4 feet, even though the HOA rules state that fences must be 4 feet or 6 feet in height, yet the HOA approved the lower fences. Andrew spoke to them about problem because county requires at least 4 feet requirement with pool. They told us we had to meet County requirements, but did not offer any solutions or suggestions. Kathleen asked all husbands while we were outside working if we could replace fence on line with a four foot fence. All declined.

Mid June 2004- During construction, noted that pool was not going to be sunken appropriate depth. Advised owner of company about this severe problem. Stated that we wanted the pool removed and installed deeper as per contract. He refused outright, said he would walk away as is, or complete his way. At that time, he had at least 75% of our money for project. We either had to let them finish, or leave a giant dirt hole in our yard for an unquestionable amount of time while we pursued legal action. We did not know what to do, so they finished. When they realized how far out of the ground the pool was, they offered to place a retaining wall, but only in the corner with the drain. This would have left severe inclines on the remaining portions of our yard.

Our pictures demonstrate our problem. We had a severe elevation of pool out of ground, at least 2.5 -3 feet on back side and left side. Since we could not use neighbors' fences as an acceptable fence for a pool, we had even less space to deal with sharp incline created by the incorrect installation of our pool. It was a very sharp decline over about 6-8 feet and the incline was supporting the three foot walkway of patio. We discussed our options and thought that leveling the back end would provide the best support for the patio, best drainage for the yard, and end up the most aesthetically pleasing for everybody. We were very concerned that the incline would be difficult to maintain grass or flowers and that material would slide into the drain. That is how and why we ended up with the retaining wall. Our yard is less than ideal for the vision we had and the contract we signed. We agonized countless hours and tried very hard to make the best of a bad situation.

We are presently pursuing a suit against the pool company and hope to get awarded finances to be able to reconstruct the yard as we originally envisioned. It is still in the early stages.





\* Pressure-Treated Wood

\* Choice Deck

Option (a 1) \_\_\_\_\_

(a 2) ~~\$15,200.00~~ \_\_\_\_\_

Option (b 1) \_\_\_\_\_

(b 2) \_\_\_\_\_

Option (c 1) \_\_\_\_\_

(c 2) \_\_\_\_\_

Option (d 1) \_\_\_\_\_

(d 2) \_\_\_\_\_

\* Pressure Treated Wood Standard Rail

Van Dorn Pools and Spas  
Shrewsbury, PA  
Reisterstown, MD Phone: (800) VAN-SWIM  
Kingsville, MD

4/22/2004

Designed for:  
Andrew King  
312 Ponfield RD.  
Forest Hill, Md. 21050

## RAPID MEMO

TO Bob GRAMMER  
PLANNING + ZONING

DATE

12/22/04

SUBJECT

312 POWFIELD RD WEST

RETAINING WALL IN DRAINAGE EASEMENT

A SITE VISIT REVEALED THAT THERE ARE NO UTILITIES IN THE EASEMENT. THE LOCATION OF THE RETAINING WALL DOES NOT APPEAR TO CONTRIBUTE TO ANY DRAINAGE PROBLEMS SINCE THE SITE HAS BEEN GRADED TO FLOW TO THE SIDE YARD EASEMENT. THEREFORE, WE DO NOT OBJECT TO THE RETAINING WALL BEING IN THE EASEMENT, SUBJECT TO THE FOLLOWING: IF THE LOCATION OF THE WALL IS SHOWN TO CONTRIBUTE TO ANY DRAINAGE PROBLEMS IN THE FUTURE, IT MUST BE REMOVED AT THE HOMEOWNERS EXPENSE.

CHERYL BADIGAN

DPH-ENGINEERING

**JAMES M. HARKINS**

HARFORD COUNTY EXECUTIVE

**JOHN J. O'NEILL, JR.**

DIRECTOR OF ADMINISTRATION



**J. STEVEN KAIL-ZIEGLER**  
DIRECTOR OF PLANNING & ZONING

## HARFORD COUNTY GOVERNMENT

### Department of Planning and Zoning

May 5, 2005

### STAFF REPORT

### BOARD OF APPEALS CASE NO. 5477

APPLICANT/OWNER: Andrew King  
312 Ponfield Road West, Forest Hill, Maryland 21050

Co-APPLICANT: Kathleen Meehan  
312 Ponfield Road West, Forest Hill, Maryland 21050

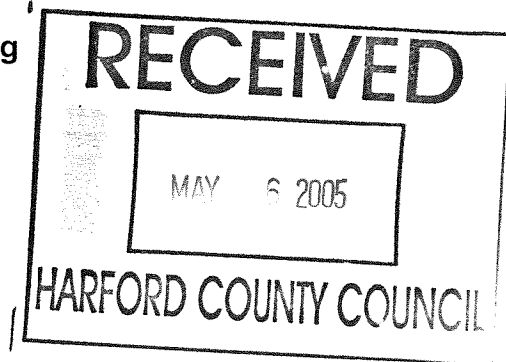
LOCATION: 312 Ponfield Road West – Tuckahoe Farms  
Tax Map: 40 / Grid: 1F / Parcel: 422 / Lot: 21  
Election District: Third (3)

ACREAGE: 0.176 of an acre

ZONING: R3/Urban Residential District

DATE FILED: January 31, 2005

HEARING DATE: April 6, 2005



### APPLICANT'S REQUEST and JUSTIFICATION:

#### Request:

“Variance for retaining wall in easement. Had to install to make yard presentable and functional with regards to drainage and pool.”

*~ Preserving our values, protecting our future ~*

MY DIRECT PHONE NUMBER IS (410) 638-3103

220 SOUTH MAIN STREET BEL AIR, MARYLAND 21014 410-638-3000 • 410-879-2000 • TTY 410-638-3086 • [www.co.ha.md.us](http://www.co.ha.md.us)

*This document is available in alternative format upon request.*

## STAFF REPORT

Board of Appeals Case Number 5477

Andrew King & Kathleen Meehan

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### Justification:

- “1. Pool Company incorrectly installed pool and refused to remedy during actual construction. Violated contract as far as agreed depth into ground. Presently pursuing but in early stages.
2. Home owners association approved 3 out of 4 neighbors to have fences less then 4-feet in height.”
3. See ATTACHMENT 1 for the balance of the Applicant’s justification.

### **CODE REQUIREMENTS:**

The Applicants are requesting a variance pursuant to Section 267-26C(6) of the Harford County Code to permit a retaining wall to be located within a recorded easement.

Section 267-26C(6) of the Harford County Code reads:

- (6) *No accessory use or structure, except fences, shall be located within any recorded easement area.*

### **LAND USE and ZONING ANALYSIS:**

#### Land Use – Master Plan:

The Applicants’ property is located between Forest Hill and Hickory. The lot fronts on the east side of Ponfield Road West in the development of Tuckahoe Farms, off of the south side of East Jarrettsville Road. A location map and a copy of the Applicants’ site plans are enclosed with the report (Attachments 2, 3 and 4).

The subject property is located within the northern end of the Development Envelope. Land use designations range from Medium and High Intensities, to Rural Residential, and Industrial/Employment. An airport, Parks, Rural Village and a Neighborhood center are nearby. The Natural Features Map shows areas of Sensitive Species Project Review Areas, Rural Legacy Areas, stream systems and Agricultural Preservation Districts and Easements. The subject property is designated as Medium Intensity, which is defined by the Master Plan as:

**Medium Intensity** - Areas within the Development Envelope where residential development is the primary land use. Density ranges from 3.5 to 7.0 dwelling units per acre. Grocery stores, variety stores and other commercial uses are examples of some of the more intensive uses associated with this designation.

Enclosed with the report are copies of portions of the 2004 Land Use Map and the Natural Features Map (Attachments 5 and 6).



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### Land Use – Existing:

The existing land uses in this area of the County are consistent with the 2004 Master Plan. The area contains a mixture of conventional single-family residential dwellings and townhouses. Commercial activity for the most part is limited to the Village of Forest Hill to the west and the crossroads of Hickory to the east. To the west of Tuckahoe Farms is the Forest Hill Industrial Airpark which contains light industrial activity along with warehouse/distribution uses. Enclosed with the report is a copy of the aerial photograph (Attachment 7).

The subject property is an irregularly shaped lot located on the east side of Ponfield Road West (Attachment 8). The lot is approximately 0.176 of an acre in size. The topography of the lot is gently sloping to rolling. It rises up gently from the road to the front of the house and at the same time slopes down from the sides of the house to the adjoining lots. The rear of the lot at this time is level from the rear of the house to the concrete patio and in-ground pool with a concrete apron. Because of the elevation of the pool and the grading immediately around the pool for the apron, it caused the rear portion of the lot to drop sharply to lots 19 and 23 to the rear. It was for this reason that a retaining wall was constructed adjacent to a portion of the rear lot line as well as the location of a 4-foot fence required by law around the pool. There are 4-lots that abut the subject lot, each with their own fenced rear yard. Immediately to the rear of the retaining wall and fence on the subject property, there is a stormdrain inlet within the easement collecting water from several lots in the immediate area. Along the rear of the subject lot leading up to the stormdrain inlet, gravel has been installed.

Improvements consist of a 2-story frame dwelling with an attached 2-car garage, a double wide concrete parking pad, fenced rear yard, retaining wall, stamped concrete patio, an apron around an in-ground pool and a hot tub. The property is nicely landscaped and all improvements appear to be well maintained. A topography map, site photographs and an enlargement of the aerial photograph are enclosed with the report (Attachments 9, 10, and 11).

### Zoning:

The zoning classifications in the area are consistent with the 2004 Master Plan as well as the existing land uses. Residential zoning ranges from RR/Rural Residential to the north side of East Jarrettsville Road to R2 and R3/Urban Residential Districts on the south side. Commercial activity is primarily located to the west in the Village of Forest Hill, and to the east along US Route 1. The Forest Hill Industrial Airpark is zoned CI/Commercial Industrial and GI/General Industrial Districts. There is a small area of AG/Agricultural situated on the north side of East Jarrettsville Road across from Tuckahoe Farms. The subject property is zoned R3/Urban Residential as shown on the enclosed copy of the Zoning Map (Attachment 12).

### Zoning Enforcement:

The subject request is the result of a Zoning Enforcement Investigation. The Department received a complaint on August 12, 2004, that a retaining wall was being constructed without a

## STAFF REPORT

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permit; and a fence in the easement. The Department conducted a site inspection on August 13, 2004. Pictures taken from adjoining properties revealed that a retaining wall was located in the 10-foot easement at the rear of the property. A hot tub was also observed, located on the patio without a permit. The Department sent the Applicants a letter dated November 3, 2004, outlining the nature of the complaint and the findings of the inspectors report. The letter discussed the Board of Appeals process and the need for a pre-application meeting. Cheryl Banigan from the Department of Public Works conducted a site inspection on December 23, 2004. A follow up letter was sent on January 26, 2005. The Applicants filed their application with the Department on January 31, 2005. Enclosed with the report are copies from the zoning enforcement file for informational purposes only (Attachment 13).

### **SUMMARY:**

The Applicants are requesting a variance pursuant to Section 267-26C(6) of the Harford County Code to permit a retaining wall to be located within a recorded easement.

Section 267-26C(6) of the Harford County Code reads:

- (6) *No accessory use or structure, except fences, shall be located within any recorded easement area.*

Variances of this nature may be approved by the Board of Appeals pursuant to Section 267-11 of the Harford County Code, provided it finds by reason of the uniqueness of the property or topographical conditions that literal enforcement of the Code would result in practical difficulty and undue hardship. Further, the applicant must show that the request will not be substantially detrimental to adjacent properties or will not materially impair the purpose of the Code or the public interest.

The Department finds that the subject property is unique. The lot is not the typical rectangular shape. There is a drainage and utility easement on 3-sides that ranges from 5 to 10-feet in width. There is a stormdrain inlet located at the left rear corner of the property. In order to stabilize the slope of the property the applicants have constructed a retaining wall. The wall also allows the applicants to construct the fence around the pool which is required by law.

Enclosed with the report is a copy of a memo from Cheryl Banigan of the Department of Public Works allowing the retaining wall to remain within the easement (Attachment 14). The memo states that the retaining wall does not appear to contribute to any drainage problems and the site has been graded to flow to the side yard easement. The memo also cautions the Applicants that should the retaining wall create a drainage problem in the future, the wall would have to be removed at the homeowners' expense.

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**RECOMMENDATION and or SUGGESTED CONDITIONS:**

The Department of Planning and Zoning recommends that the request be approved subject to the following conditions.

- 1) The applicants must obtain all necessary permits and inspections for the retaining wall.
- 2) If in the future, the Department of Public Works finds that the retaining wall is contributing to a drainage problem, the wall shall be removed at the homeowners' expense.



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Dennis J. Sigler, Coordinator  
Zoning & Board of Appeals Review



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Anthony S. McClune, AICP  
Deputy Director, Planning and Zoning

DJS/ASM